

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**GARY LEE STEWART,
Grievant,**

v.

Docket No. 2016-0962-CONS

**DODDRIDGE COUNTY BOARD OF EDUCATION,
Respondent.**

DECISION

Grievant, Gary Lee Stewart, previously employed by the Doddridge County Board of Education as a substitute bus operator, filed two separate grievances on November 9, 2015, and December 1, 2015. Grievant challenges his suspension and the termination of his substitute bus operator contract. These grievances were consolidated by the Public Employees Grievance Board by Order dated December 17, 2015. A level three hearing was conducted before the undersigned on February 16, 2016, at the Westover office of the Grievance Board. Respondent appeared by its counsel, Richard S. Boothby, Bowles Rice, LLP, and Superintendent Rick Coffman. Grievant appeared *pro se*. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals on March 21, 2016.

Synopsis

Grievant's substitute bus operator contract was terminated by Respondent on November 30, 2015, following the suspension of his employment by Superintendent Coffman. The termination followed a hearing held before the Doddridge County Board of Education on a charge of insubordination. The evidence established that Grievant was

trained and repeatedly counseled that the front seats of the school bus must be kept clear for preschool children. Grievant's repeated choice not to follow the seating rule for preschool children, of which he was fully aware, amounted to insubordination. As a result, Respondent proved by a preponderance of the evidence that it properly exercised its authority in terminating Grievant's substitute bus operator's contract.

The following Findings of Fact are based on the record of this case.

Findings of Fact

1. Grievant was a probationary substitute bus operator employed by Respondent since early March of 2015.
2. Grievant attended certain transportation employee training sessions after being hired. These sessions included a review and explanation of Respondent's policy on assigning substitute service personnel. On March 10, 2015, Grievant signed a form certifying that he had received the policy and the policy had been fully explained to him.
3. West Virginia Board of Education Policy 2525 provides that, "children transported by a school bus who attend a WV Pre-K classroom and are not yet enrolled in kindergarten will sit in a segregated area of the vehicle with other WV Pre-K children."
4. On August 11, 2015, Respondent's personnel and transportation coordinators, Julie Todd and Charles Titus, provided in-service training for all transportation employees. Grievant attended this training session. Among other topics, the August 11, 2015, session addressed bus seating for preschool children and other young children who ride the buses.

5. Respondent's segregated area for preschool children is the front seat of the bus. This rule is made very clear to all bus operators and others who attend transportation employee training conducted by Julie Todd and Charles Titus.

6. Despite being trained to keep the front seats available for preschool children, on more than one occasion, Grievant failed to do so and refused to assist an aide in clearing the front seat for these very young children.

7. On October 5, 2015, Grievant had started driving an activity bus route using bus #26. Customarily, if an activity run's bus operator needs to take the evening off, a substitute bus operator will be hired because few regular bus operators are able or interested in taking the assignment. Substitute bus operators are called in rotating seniority order.

8. On October 13, 2015, Grievant started substituting for bus operator Dennis Bickler who was out ill. Mr. Bickler drives bus #19. Bus #19 transports, among other students, preschool children. After their school day ends, all preschool children are bussed to the middle school from the preschool center. From there, the children then board the buses that will take them home.

9. On October 28, 2015, aides Dodi Davis and Jill Meyers, spoke to Mr. Titus about a problem they were having with Grievant refusing to keep the front seat of his bus available for preschool students. Ms. Davis explained that Grievant had repeatedly refused to move some older students from the front seat when she told Grievant that the seat was needed for the preschool children.

10. Mr. Titus boarded Grievant's bus that same day to remind him that the front seat needed to be secured for Pre-K students. Grievant told Mr. Titus that he was having

trouble getting the older students out of these seats but that he would keep the seat open in the future.

11. Grievant was again reminded of this by Mr. Titus and the general director of Doddridge County Schools on October 30, 2015. At this meeting, Grievant once again claimed that he could not get the older students to stay out of the front seat.

12. On November 2, 2015, Superintendent Coffman met with Grievant regarding concerns about his repeated failures to follow clearly-established policies. Mr. Coffman believed that Grievant understood the importance of following the rule at the close of the meeting.

13. On November 2, 2015, Grievant was scheduled to drive his Activity Run. This Activity Run starts around 5:30 p.m. and ends around 7:00 p.m. each weekday except Fridays.

14. Grievant's birthday is on November 2. On that day prior to 2:00 p.m., when Grievant usually left his house to perform his afternoon run, Grievant received a text asking whether he would like to go to dinner that evening for his birthday.

15. After arriving at the Doddridge County Elementary School for his afternoon run, Grievant tried to find Glenn Stout to ask him whether he would cover Grievant's run later that same evening. Grievant located bus operator Gary Smith who was substituting for Glenn Stout that day.

16. Grievant told Mr. Smith that he was looking for Glenn Stout because he was going to ask him if he would drive Grievant's run that evening. The proper procedure to arrange for a substitute for Grievant's run was to call Mr. Titus so that he could contact the next substitute bus operator in the rotation.

17. On November 3, 2015, Mr. Titus asked the bus aides if Grievant was keeping the front seat clear for preschool students who were boarding the bus. The aides responded that Grievant was still failing to keep the front seat clear. Mr. Titus boarded Grievant's bus and witnessed for himself that there were older students in the front seats.

Discussion

The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 156-1-3 (2008); *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Pursuant to West Virginia Code, school personnel may be suspended or dismissed at any time for immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a nolo contendere to a felony charge. W. VA. CODE § 18A-2-8; *Kanawha County Bd. of Educ. v. Sloan*, 219 W. Va. 213, 632 S.E.2d 899 (2006).

The authority of a county board of education to terminate an employee must be based on one or more of the causes listed in W. VA. CODE § 18A-2-8 and must be exercised reasonably, not arbitrarily or capriciously. Syl. Pt. 2, *Parham v. Raleigh County Bd. of Educ.*, 192 W. Va. 540, 453 S.E.2d 374 (1994); Syl. Pt. 3, *Beverlin v. Bd. of Educ.*, 158 W. Va. 1067, 216 S.E.2d 554 (1975); *Bell v. Kanawha County Bd. of Educ.*, Docket No. 91-20-005 (Apr. 16, 1991).

Respondent contends that Grievant's conduct in failing to provide front row seating for the preschool children throughout his probationary employment constitutes insubordination. Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." *Santer v. Kanawha County Bd. of Educ.*, Docket No. 03-20-092 (June 30, 2003); *Butts v. Higher Educ. Interim Governing Bd.*, 212 W. Va. 209, 569 S.E.2d 456 (2002)(*per curiam*). See *Riddle v. Bd. of Directors/So. W. Va. Community College*, Docket No. 93-BOD-309 (May 31, 1994); *Webb v. Mason County Bd. of Educ.*, Docket No. 26-89-004 (May 1, 1989). "[F]or there to be 'insubordination,' the following must be present: (a) an employee must refuse to obey an order (or rule or regulation); (b) the refusal must be wilful; and c) the order (or rule or regulation) must be reasonable and valid." *Butts, supra*.

West Virginia Board of Education Policy 2525 states in relevant part:

[c]hildren transported by a school bus who attend a WV Pre-K classroom and are not yet enrolled in kindergarten will sit in a segregated area of the vehicle with other WV Pre-K children . . .
W. Va. Code of St. R. § 126-28-7.1.b

Respondent requires its bus operators to set aside the front seat of the school bus for preschool children. This rule is made clear to all bus operators who attend transportation employee training by Julie Todd and Charles Titus. The record of this case established that transportation employees are instructed on an annual basis that the very young riders of the bus must have a designated area, and that Respondent designated the front of the bus for safety reasons.

The record of this case also established that Grievant was trained and counseled about the Respondent's rule that the front seat of the school bus must be kept clear for preschool children. This is a simple rule intended to provide safe transportation for small preschool children and designed to comply with State Board Policy 2525. Grievant's repeated choice to not follow the seating rule for preschool children, of which he was aware, constitutes insubordination.

Finally, the record was undisputed that Grievant had a belated request to dine out the evening of his birthday, but he was scheduled to make an evening run. Grievant tried to get another bus operator to take his Activity Run instead of calling Mr. Titus as required by Respondent's policy. Grievant was required to contact Mr. Titus so that Mr. Titus could determine which bus operator was entitled to be called next for this substitute opportunity. There would have been no point in seeking out Mr. Stout or any other regular bus operator except to arrange for his own substitute to cover the Activity Run.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a

preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 156-1-3 (2008); *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988).

2. Pursuant to West Virginia Code, school personnel may be suspended or dismissed at any time for immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a nolo contendere to a felony charge. W. VA. CODE § 18A-2-8; *Kanawha County Bd. of Educ. v. Sloan*, 219 W. Va. 213, 632 S.E.2d 899 (2006).

3. The authority of a county board of education to terminate an employee must be based on one or more of the causes listed in W. VA. CODE § 18A-2-8 and must be exercised reasonably, not arbitrarily or capriciously. Syl. Pt. 2, *Parham v. Raleigh County Bd. of Educ.*, 192 W. Va. 540, 453 S.E.2d 374 (1994); Syl. Pt. 3, *Beverlin v. Bd. of Educ.*, 158 W. Va. 1067, 216 S.E.2d 554 (1975); *Bell v. Kanawha County Bd. of Educ.*, Docket No. 91-20-005 (Apr. 16, 1991).

4. Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." *Santer v. Kanawha County Bd. of Educ.*, Docket No. 03-20-092 (June 30, 2003); *Butts v. Higher Educ. Interim Governing Bd.*, 212 W. Va. 209, 569 S.E.2d 456 (2002)(*per curiam*). See *Riddle v. Bd. of Directors/So. W. Va. Community College*, Docket No. 93-BOD-309 (May 31, 1994); *Webb v. Mason County Bd. of Educ.*, Docket No. 26-89-004 (May 1, 1989).

5. Respondent has proven by a preponderance of the evidence that Grievant engaged in conduct constituting insubordination.

Accordingly, the grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *a/so* 156 C.S.R. 1 § 6.20 (eff. July 7, 2008).

Date: April 27, 2016

Ronald L. Reece
Administrative Law Judge